



BEFORE THE ARIZONA CORPORATION

IN THE MATTER OF:

SIR MORTGAGE & FINANCE OF ARIZONA,
INC., an Arizona corporation,GREGORY M. SIR (a/k/a "GREG SIR"),
and ERIN M. SIR, husband and wife,Respondents.DOCKET NO.
S-20703A-09-0461PREHEARING
CONFERENCE

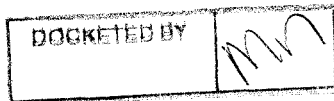
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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Arizona Corporation Commission, in Hearing Room 1 of
4 said Commission, 1200 West Washington Street, Phoenix,
5 Arizona, commencing at 10:00 a.m. on the 28th of
6 October, 2009.

7

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BEFORE: MARC E. STERN, Administrative Law Judge

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10 APPEARANCES:

11

For the Applicant:

12

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By Mr. Paul J. Roshka, Jr.
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16 For the Arizona Corporation Commission Staff:

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COLETTE E. ROSS
Certified Reporter
Certificate No. 50658

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1 ALJ STERN: Good morning. This matter is now
2 open in the matter of Sir Mortgage, et al., in Docket
3 No. S-20703A-09-0461.

4 My name is Marc Stern. I will preside over this
5 matter this morning.

6 And at this time we will take appearances.
7 Present for the Division.

8 MR. DAILEY: Mike Dailey.

9 ALJ STERN: And present on behalf of the
10 respondent.

11 MR. ROSHKA: Good morning, Mr. Stern. Paul
12 Roshka of Roshka DeWulf & Patten for the respondents.

13 ALJ STERN: All right. And, Mr. Dailey, what is
14 the status of this matter as far as the Division is
15 concerned? I know you issued a temporary order and I
16 just was given a copy of a couple motions that were
17 filed. Do you have any comments on this? Or one
18 motion.

19 MR. DAILEY: We are at the stage where we would
20 request that a hearing date be set.

21 ALJ STERN: Okay. What is the -- Mr. Roshka,
22 what is your situation here? I know you have a pending
23 motion before us.

24 MR. ROSHKA: We do, Your Honor. The motion we
25 have before you is the motion to vacate the temporary

1 cease and desist order.

2 As you know, the Commission's Rule R-14-4-307
3 states quite clearly that these extraordinary remedies
4 are to be issued only when the public welfare is
5 threatened. There has been no such threat. So we have
6 that motion before you, which we would like the Division
7 to respond to so perhaps we can learn what the public
8 welfare threat was.

9 Our client does not advertise. Our client's
10 website does not seek or solicit funds. So we are very
11 curious as to what public welfare interest has been
12 threatened. And we ask that the Division respond to
13 that and that we have a hearing date set for us to be
14 able to argue that to you.

15 ALJ STERN: Mr. Dailey.

16 MR. DAILEY: The Division responded yesterday
17 to --

18 ALJ STERN: Yes. It seemed like a rather brief
19 response. I know what you cited and I know the
20 arguments made by the respondent went into quite a bit
21 of detail about the nature of this investment. I don't
22 necessarily have any feelings one way or the other.

23 But the nature of this investment, if I
24 understood your initial pleading way back when we were
25 talking, is investment contracts of some sort. And did

1 you have any basis in fact, I guess? I don't want to
2 address this today. But does the Division need more
3 time to respond and do you intend to file a more
4 detailed response than what you filed, I guess it is,
5 two days ago?

6 MR. DAILEY: As to the issue of a detailed
7 response, the plain language of the TC&D I believe
8 addresses all of the issues previously raised by the
9 respondents. So I would request the ALJ to review the
10 allegations of the TC&D.

11 MR. ROSHKA: Mr. Stern, I have not seen the
12 response the Division filed.

13 ALJ STERN: This is filed the 26th. They mailed
14 you a copy. You may not have received it.

15 MR. ROSHKA: Well, that's -- yes, I have not
16 received, at least as I left the office this morning, I
17 had not received it.

18 It would be nice if perhaps in this case we
19 could reach agreement that there is a fax or e-mail of
20 pleadings like we do for the Division.

21 I have now been handed a copy of the response.
22 And I ask that we be provided a couple days to file a
23 reply to whatever this document says.

24 ALJ STERN: Why don't -- you know, like I say, I
25 think overall I need a little bit more time to review

1 your filing. I know at the beginning you say it is a
2 motion and answer to dismiss. And you went into detail
3 on what has been provided to the Division. And with
4 respect to your actual -- your motion for relief to
5 vacate the temporary order, I guess, is based on your
6 answer. Would you say that's pretty much it right now?

7 MR. ROSHKA: No. Actually I think the motion is
8 based upon the fact that there is a lack of a basis to
9 summarily issue a temporary cease and desist order.

10 ALJ STERN: Okay. Let me ask you this,
11 Mr. Dailey. I couldn't quite tell from the temporary
12 order and notice. How much money are we talking has
13 been invested in these various vehicles that are alleged
14 in your notice, if you have some sort of a ballpark?

15 MR. DAILEY: Judge, based on the respondent's
16 own business records, we are talking about hundreds of
17 millions of dollars. And as to the basis of the TC&D,
18 as alleged in the TC&D and noted in the Division's
19 response, despite the existence of our investigation,
20 the respondents, I believe, continued to sell these
21 investments to the public right up until the date that
22 the TC&D was filed.

23 ALJ STERN: And I know there was an issue raised
24 by Mr. Roshka, I think, also, and I think you responded
25 to it, you know, just in looking at this thing briefly,

1 with respect to the dual jurisdiction of both the, I
2 guess, what used to be the Banking Department and now
3 what is it, the Financial --

4 MR. ROSHKA: Financial Institutions.

5 ALJ STERN: -- Financial Institutions
6 Department, I guess, of the state and also the
7 Commission with the Securities Division, I guess I don't
8 find dual jurisdiction unusual. It does happen. But in
9 this instance, I am not --

10 MR. DAILEY: Judge, if I may, we can certainly
11 further brief the issue if you like, but my
12 understanding is that a motion such as this, we have to
13 take the well pled and, in this case, very specific
14 allegations contained in the TC&D as true for the
15 purposes of such a motion or in a light most favorable
16 to upholding the motion. And once again, in this case,
17 I would request a ruling based on what we have
18 submitted. The arguments, although well taken, as from
19 an advocacy standpoint I appreciate, but I don't think
20 they have any basis in fact or law and are untested and
21 unprecedented.

22 ALJ STERN: Okay. The only thing I, you know,
23 can comment from my viewpoint is if there is an argument
24 as to which administrative agency should regulate in
25 this instance, I think that might be something better

1 taken up with the Superior Court. But with respect to
2 this particular pleading, Mr. Roshka has stated he
3 hasn't seen your response or had a chance to respond to
4 it.

5 I will give you a chance, Mr. Dailey, if you
6 wish to file anything more in depth than what you
7 pleaded. If you indicate to me you are satisfied with
8 the Division's response, I will leave it at that and
9 give Mr. Roshka a chance to file a reply.

10 MR. DAILEY: If you are asking me --

11 ALJ STERN: Your choice. I don't -- if you
12 think your pleading is sufficient at this point in time,
13 it is fine, you can leave it at that. He can file a
14 reply. If not, if you want more time, because you did
15 file a very fast reply to Mr. Roshka's motion to vacate
16 the temporary order...

17 MR. DAILEY: Correct. I would respond by asking
18 you a question as to what exactly that you are looking
19 for in addition to maybe the jurisdictional argument.

20 ALJ STERN: Well --

21 MR. DAILEY: If you need more, I am happy to
22 file more if you, if you feel like you can't rule on the
23 pleadings as submitted.

24 ALJ STERN: I can. Believe me, one way or the
25 other we will end up with this going in one direction or

1 another. But I am just wondering if you needed more
2 time. I knew probably one of the reasons you filed your
3 response so quickly was because of the fact that this
4 prehearing conference was scheduled for today.

5 MR. DAILEY: Yes. And we received the motion at
6 the end of business on Friday, so yes, time was of the
7 essence.

8 ALJ STERN: I understand. So as I say, if you
9 want to file a bit more detailed brief, that would be --
10 I will give you time to do it, at which time I would
11 suggest to Mr. Roshka rather than file a reply to this
12 particular filing, you would file one to that. And I
13 can schedule a hearing with respect to oral arguments on
14 your motion, if you would like, in approximately 30
15 days, 25 days, somewhere in thereabouts.

16 MR. ROSHKA: That would be fine by us.

17 MR. DAILEY: That would be okay.

18 ALJ STERN: Okay. Why don't we do this,
19 Mr. Dailey. We have their answer and motion to vacate
20 the temporary order to cease and desist. That was filed
21 the 23rd. Today is the 28th. I can give you ample
22 time.

23 Let's see. How about filing by the 15th? I
24 will give you until the 16th to make a filing in --
25 well, make it the 13th of November. Okay? I think that

1 should be sufficient because you probably have done a
2 little bit of work in your initial response.

3 Then, Mr. Roshka, you can get something in
4 possibly by the 25th and I will see what I can schedule
5 around the first week of December for you. Is that
6 amenable?

7 MR. ROSHKA: That would be fine, sir, yes.

8 MR. DAILEY: Yes.

9 ALJ STERN: All right. Let's take a little bit
10 of a break here and we will see where we are at in terms
11 of scheduling.

12 (A recess ensued from 10:13 a.m. to 10:35 a.m.)

13 ALJ STERN: Let's go back on the record.

14 We have had some off-the-record discussions
15 regarding this matter. The parties have agreed that, I
16 believe, documents are going to be filed. The Division
17 will file any further response to the respondents'
18 motion to vacate the temporary order by, I believe it
19 is, November 13th.

20 And, Mr. Roshka, any further reply by you will
21 be filed by the 25th, is that correct? Any disputes on
22 those dates?

23 MR. ROSHKA: So far so good.

24 ALJ STERN: Okay. And then we will have some
25 oral discussions on this matter on the temporary order

1 as of December 8th. And let's see what we can do at
2 that time.

3 Maybe in the interim, you might reach some sort
4 of an agreement. There is always an offer of rescission
5 if somebody is unhappy in these matters. Worse comes to
6 worst, we have agreed that we will have a hearing on
7 February 1st through the 5th. And I will probably order
8 you to exchange some documents and copies of your
9 documents and your witness list somewhere around the
10 beginning of January or the end of December.

11 Is that okay?

12 MR. ROSHKA: Speaking for myself, beginning of
13 January is better than the end of December.

14 ALJ STERN: Okay. That's for the exchange of
15 documents?

16 MR. ROSHKA: Yes.

17 ALJ STERN: Okay. And in the meantime we can
18 always be hopeful that settlement will come sometime.

19 All right. Anything else, Mr. Dailey?

20 MR. DAILEY: No.

21 ALJ STERN: Mr. Roshka?

22 MR. ROSHKA: Two things, Mr. Stern. One is,
23 will the Division agree in the future to either hand
24 deliver, e-mail or fax any pleadings they file in this
25 proceeding?

1 ALJ STERN: I don't know. Mr. Dailey, I think,
2 you know, the rules -- normally most people get things
3 by mailing, but...

4 And I am surprised you didn't get a copy of
5 their filing.

6 MR. DAILEY: Yes. E-mailed it on Monday. I
7 was --

8 ALJ STERN: On the 26th?

9 MR. DAILEY: I assumed it was going to be
10 received by Tuesday. And of course the information is
11 available on our website.

12 MR. ROSHKA: Well, it wasn't. And e-mail,
13 Mr. Dailey and I communicate regularly by e-mail. He
14 has got my address. I have got his address. If he
15 could provide me with the courtesy of e-mailing me with
16 a copy of whatever he is going to mail to me, I would
17 appreciate it.

18 ALJ STERN: Is that possible? You don't have to
19 speak in the microphone. I forgot to turn them on.

20 MR. DAILEY: What exactly is his point?

21 ALJ STERN: He wants you, if you are going to
22 make a filing, I guess, that is going to require a
23 response, to e-mail him a copy of it at the time you are
24 docketing it or whatever.

25 MR. DAILEY: Okay.

1 ALJ STERN: That's modern science, what it does,
2 I guess.

3 MR. ROSHKA: And the other matter is this
4 temporary cease and desist is apparently issued pursuant
5 to a delegation of authority from the Commission. And I
6 ask that Mr. Dailey provide us with a copy of that
7 delegation.

8 MR. DAILEY: I don't have it with me.

9 ALJ STERN: I thought you had it in your wallet.

10 MR. DAILEY: If Paul wants to walk over, I can
11 get it to him within a minute.

12 ALJ STERN: Okay.

13 MR. DAILEY: I thought that might be a matter of
14 public record, but I apologize for not having that, you
15 know, in my --

16 ALJ STERN: I don't know how that works. I
17 thought it was authorized either in the rules or by
18 statute when they did that.

19 MR. DAILEY: Okay.

20 ALJ STERN: Okay. Anything else?

21 (No response.)


22 ALJ STERN: Nothing else, this matter is
23 recessed. We will see you, I guess, December 8th at
24 9:30.

25 (The proceedings concluded at 10:39 a.m.)

1 STATE OF ARIZONA)
) ss.
2 COUNTY OF MARICOPA)
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7 I, COLETTE E. ROSS, Certified Reporter No.
8 50658 for the State of Arizona, do hereby certify that
9 the foregoing printed pages constitute a full, true and
10 accurate transcript of the proceedings had in the
11 foregoing matter, all done to the best of my skill and
12 ability.
13

14 WITNESS my hand this 7th day of November,
15 2009.
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21 _____
 COLETTE E. ROSS
 Certified Reporter
 Certificate No. 50658
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